

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner appealed the remaining finding. This matter was scheduled for hearing a year ago but was continued to allow the petitioner to review the records and continued further because of the serious illness of the Department's

attorney. At the time of the hearing held on February 8, 2001, the Department could present no SRS employees who were involved in the original finding due to the passage of time. There were no recordings or transcripts of statements made by the children. The Department's case was presented through original intake documents, the testimony of the petitioner herself and the SRS District Director who reviewed the findings during the internal review in the Fall of 1999.

3. The documents showed that the petitioner herself had called to talk with SRS about her daughter's behavior on March 28, 1990. She allegedly related an incident in which her daughter "yelled" at her and the petitioner reached out to slap her on the face. The petitioner allegedly reported that the child turned her head and got a bloody nose. She also allegedly discussed problems her daughter was having with her new stepfather and her natural father whom she wanted to return to live with.

4. The SRS worker talked with the petitioner's daughter who allegedly told her that she moved her head when her mother slapped her and she got a bloody nose. The worker reported upon interviewing the child that she saw "no mark or bruise on M's clean, happy face." The worker concluded that abuse had occurred based on the conversation with the mother and

daughter. The form shows that she described M's behavior as hyperactive and attention getting. She referred the mother to parenting groups and noted that the mother was willing to cooperate in learning ways to deal with her daughter's behavior that did not involve corporal punishment. The case was closed because the worker felt the risk of harm to the child was "very low". No written notice of the abuse finding was ever provided to the petitioner. She discovered she had a right to appeal this finding only after she was denied the day care registration certificate.

5. The petitioner did appeal the finding and went through an internal hearing process at SRS before coming to the Board. At the first level of this process, which occurred in the fall of 1999, the District Director spoke with the petitioner and read her the intake worker's notation on the 1990 form stating that "the child had turned her head as the mother was about to slap her and gave her a bloody nose". He testified that the petitioner became animated when he read that statement and responded "if she hadn't turned her head she wouldn't have received a bloody nose". He took this remark as an explanation of what had happened and not a denial. The petitioner did not attempt to offer any more information about the slap claiming that it was too long ago

and that she could not remember what happened. Based on this remark, he continued to substantiate the finding because he believed the event occurred and felt that a blow to the head of an eight and a half-year-old was a serious issue, regardless of the bloody nose.

6. A few weeks later when the appeal reached the Commissioner's level, the petitioner appeared with M., who is now an adult, who "reminded" the petitioner that she had not been slapped by her but rather by her abusive husband and that the petitioner had been covering for him because she feared him. Neither the petitioner nor M. could remember any of the details about the ex-husband's alleged abuse. The Commissioner rejected the abusive husband story based on the fact that the incident had been reported by the petitioner herself--an unlikely event, in his view, if the petitioner feared her ex-husband.

7. At the hearing, the petitioner testified that she did not recall that there had been an investigation about a bloody nose, but rather recalled that her daughter may have reported some other incident to the school. She says these reports were occurring because her daughter was trying to manipulate her into letting her return to her natural father's home. She did not recall that she had reported this incident.

She claimed to have no memory of the persons who talked to her then although she said she remembers covering up for her ex-husband during the investigations because he was actually the perpetrator of some of the acts. She claimed that her ex-husband was very abusive towards her and that she had restraining orders against him and feared him. She claims she never struck her child in the face. She does recall having conversations with SRS workers about using corporal punishment to discipline children and says she did take part in self-help groups thereafter. With regard to the internal review of a year and a half ago, she does not recall ever admitting that she had hit her daughter and recalls rather that she denied it. She has found a different job and is no longer seeking to be a registered day care provider but she does want to clear her name.

8. Based on the above testimony and documents it is found that the petitioner did report to SRS that she had slapped her child as a form of discipline in March of 1990. She called SRS to try to seek help in dealing with a difficult child. It appears that the blow on the nose which led to a nosebleed was not intended by the petitioner. The blow was accidentally caused by the unexpected movement of the child's head while the slap was occurring. The child's face had no

bruise or mark on it when she was interviewed that day or the next by SRS. The petitioner was cooperative with following the suggestions of SRS regarding parenting counseling. The risk of future injury to M. was determined by SRS at that time to be low, a prediction which apparently was borne out as no further reports of abuse were received with regard to M. throughout her childhood.

9. The petitioner's recent claim that she had not performed the slapping does not appear to be true. It is inconsistent with her prior confessions and inconsistent with the petitioner's self-report of the incident. This story appears to be a recent desperate fabrication designed to overcome her lack of success in obtaining an expungement based on the previously revealed truth.

ORDER

The finding that the petitioner physically abused her child is expunged.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the

reported facts are "unsubstantiated". 33 V.S.A. §§ 4914, 4915 and 4916.

The statute further provides:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

33 V.S.A. § 4916(h)

In order to sustain its burden of proof in these matters, SRS is required to show that the registry report is based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused . . ." See 33 V.S.A. § 4912(10).

33 V.S.A. § 4912(2) defines an "abused" child as one whose "physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare." "Harm", "risk of harm", "physical injury" and "emotional maltreatment" are defined as follows:

(3) "Harm" can occur by:

(A) Physical injury or emotional maltreatment

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury .

(6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(7) "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development.

33 V.S.A. § 4912

It is difficult to find that the child in this case suffered a "physical injury" as defined in the above statute. The day after the slap was reported, the Department could find no bruise, mark or other disfigurement. Even if the bleeding nose could be considered a temporary disfigurement, it is clear from the facts that the petitioner had no intent to hit the child in the nose. It was accidentally caused when the child turned her head. Neither can it be found that there was any evidence that the petitioner engaged in a pattern of malicious behavior which was impairing the child's psychological growth and development.

When neither physical injury nor emotional mistreatment is present it is difficult to find that the child has been "harmed" to the extent that abuse must be found. Even when a "physical injury" exists, a finding of harm does not

automatically follow. The statute says that "physical injury" can be an indicator of harm but the statute still requires some assessment of whether the child has actually been harmed or is at risk of harm.

At the time this finding was made, the SRS investigator made it clear that she felt the child was at a low risk of harm. Given that assessment, it is not at all clear why the Department originally found that "abuse" existed in this situation. SRS now maintains, some eleven years after the incident, that the slapping alone, even without the nose being struck, did place the child at risk and was sufficient to find abuse. While a single incident of slapping or spanking could constitute "abuse", there must be some circumstance surrounding it that indicates that the child has either been harmed or is at risk of harm. That circumstance has not been presented here. While the petitioner's form of discipline might have been less than desirable, a reasonable person could not conclude that the slap constitutes child "abuse" as defined in the statute.

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